

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 1:06-cr-319

v.

HONORABLE PAUL L. MALONEY

Trory Quante Herrod,

Defendant.

\_\_\_\_\_ /

**ORDER VACATING PREVIOUS ORDER AND DISMISSING MOTION  
FOR MODIFICATION OF SENTENCE**

Defendant Trory Quante Herrod has filed a motion for modification of his sentence pursuant to 18 U.S.C. § 3582(c)(2) based upon the modification of the Drug Quantity Table with regard to cocaine base (crack cocaine).

Section 3582(c)(2) permits a court to reduce the term of imprisonment of a defendant who has been sentenced based on a sentencing range that has subsequently been lowered by the Sentencing Commission. 18 U.S.C. § 3582(c)(2). Amendments 706 and 711 of the United States Sentencing modified the Drug Quantity Table with regard to cocaine base (crack cocaine). These modifications were made retroactive effective March 8, 2008. U.S.S.G. 1B1.10(c).

It appears that Defendant has appealed his conviction and sentence and that his

appeal is currently pending in the Sixth Circuit Court of Appeals. (Dkt. No. 37, Notice of Appeal; CCA No. 07-2197). It is “settled law that filing a notice of appeal with the district court divests the district court of jurisdiction to act in a case, except on remedial matters unrelated to the merits of the appeal.” *Fort Gratiot Sanitary Landfill, Inc. v. Mich. Dep’t of Natural Res.*, 71 F.3d 1197, 1203 (6th Cir.1995). Because of the pendency of the appeal, this Court has no jurisdiction to consider Defendant’s motion for modification of his sentence. Accordingly,

**IT IS HEREBY ORDERED** the Court’s previous order regarding objections to report of eligibility (Dkt. No. 50) is **VACATED**.

**IT IS FURTHER ORDERED** that Defendant’s motion for modification of sentence (Dkt. No. 48) is **DISMISSED WITHOUT PREJUDICE** to defendant’s ability to re-file the motion once his appeal has been resolved.

Date: August 6, 2008

/s/ Paul L. Maloney

Paul L. Maloney

Chief United States District Judge